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CALVIN YEAGER, ET AL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA, RENO

DOMINO'S PIZZA FRANCHISING LLC, Plaintiff, vs. CALVIN YEAGER, et al, Defendants.	CASE NO. 3:10-CV-560-HDM-RAM MOTION TO DISMISS, REQUEST FOR ATTORNEYS FEES Date: June 21, 2011 Time: 10:30 a.m. Dept: Judge Howard D. McKibben

Defendants and other persons alleged to have assets of the defendants hereby move the Court to dismiss this action, to dismiss the Order to Show Cause against them, and to award them their reasonable attorneys fees in defending this action and bringing this Motion.

This case is an enforcement of judgment proceeding related to a judgment entered against CALVIN YEAGER, VALLEY PIZZA INC. and LAKESIDE PIZZA INC. in the Eastern District of Michigan, Southern Division, Case No. 09-14704.

POINTS AND AUTHORITIES

1. THIS ACTION WAS STAYED BY THE BANKRUPTCY OF CALVIN YEAGER, AND ANY ENFORCEMENT AGAINST PROPERTY OR RIGHTS BY OR THROUGH CALVIN YEAGER IS BARRED BY DEBTOR'S DISCHARGE UNDER THE BANKRUPTCY CODE.

The Order sought to be enforced herein is against defendants CALVIN YEAGER, VALLEY PIZZA INC and LAKESIDE PIZZA INC (docket #1, paragraph 2). That Order says nothing about any non-party that it may be enforced against, so F.R.CivP. Rule 71 does not apply to anyone other than the named defendants.

VALLEY PIZZA INC and LAKESIDE PIZZA INC have been dissolved and are no longer legal entities. CALVIN YEAGER was the sole owner of those two companies. CALVIN YEAGER filed for protection under Chapter 7 of the United States Bankruptcy Code on November 18, 2010, Case No. 10-50416 in the United States Bankruptcy Court, Eastern District of California, and received a Discharge thereunder on March 9, 2011. Defendants request the Court take judicial notice of the proceedings in that case.

The automatic stay of 11 U.S.C §362(a)(2) prevents the enforcement, against the debtor or against property of the estate, of a judgment, obtained before the commencement of the bankruptcy case. Property of the estate includes all legal and equitable interests of the debtor in property as of the commencement of the case (11 U.S.C §541(a)(1)), which obviously includes the telephone number, operating manual, customer list, and any other property which plaintiff is now seeking to recover from defendants or allegedly related persons.

The automatic stay was terminated by the entry of Yeager's Discharge, but that Discharge voided any judgment that was a determination of the personal liability of the debtor, operates as an injunction against the enforcement or continuation of an action to collect, recover or offset any such debt as a personal liability of the debtor, and operates as an injunction against the employment or continuation of an action to collect or recover from the property of the debtor which was property of the estate (11 U.S.C §524(a)).

All property, rights and interests of Yeager, including the companies he owned, were administered by the bankruptcy trustee as part of his bankruptcy estate, and Yeager now holds all those properties, rights and interests free and clear of any judgment against him or that property.

This court is barred from doing anything in conflict with that bankruptcy law, because jurisdiction over such matters lies solely in the United States Bankruptcy Court.

Because the present case is solely an enforcement of judgment action, then this case must be dismissed.

2. THE COURT HAS NO PERSONAL JURISDICTION OVER MATTHEW MATLOCK, MELISSA YEAGER OR PRONTO PIZZA INC.

Plaintiff's Motion to Enforce Judgment (docket #7) demonstrates that the only thing served on Matthew Matlock, Melissa Yeager or Pronto Pizza Inc. was an Injunction Order dated January 25, 2010 (Exhibit 1 to docket #7), which was only by delivery of a copy to Matthew Matlock and nobody else. The Order for Final Judgment was only against Calvin Yeager and his companies, and was never delivered to anyone seeking to be brought before this court (Exhibit 4 to docket #7, served to Courtney McRae). An order cannot be enforced against anyone unless the court has personal jurisdiction over them, though execution could be made against property of a judgment debtor under their control. That is not the case here.

Constitutional due process requires that a person be served with process in certain prescribed manners in order to confer jurisdiction to the court over that person. A Complaint must be filed which presents a cause of action against that person (F.R.CivP. Rule 3), pursuant to which a Summons must be issued and served on that person (F.R.CivP. Rule 4). That never happened in this case with regard to Matthew Matlock, Melissa Yeager or Pronto Pizza Inc.

Plaintiff alleges the Motion to Enforce Judgment was served on Matthew Matlock, Melissa Yeager or Pronto Pizza Inc. by mailing it to them, but that was not service of a Summons and Complaint, and they were not parties to the judgment seeking to be enforced. Further, Melissa Yeager lives in California and does not receive mail at the address stated, and "Pronto Pup Pizza" is nothing (Pronto Pizza Inc. is a Nevada corporation which operates a business at South Lake Tahoe, CA, and Pronto Pizza is a registered fictitious business name of Reier Enterprises Inc. a Nevada corporation which operates a business at the Gardnerville location).

The Federal Rules of Civil Procedure are there to provide order to the system for obtaining personal jurisdiction over persons and thereafter adjudicating their respective rights and obligations. Those rules were not complied with in this matter, and this Court therefore does not have personal jurisdiction over Matthew Matlock, Melissa Yeager or Pronto Pizza Inc.

Any order of this Court to or against Matthew Matlock, Melissa Yeager or Pronto Pizza Inc. must be dissolved because of lack of personal jurisdiction, and this action as regards them dismissed.

3. DEFENDANTS HAVE INCURRED REASONABLE ATTORNEYS FEES TO DEFEND THEMSELVES FROM THE ACTIONS OF PLAINTIFF, FOR WHICH THEY SHOULD BE REIMBURSED.

Plaintiffs have improperly brought and maintained this action against defendants and the other persons, causing all of them to incur reasonable attorneys fees to defend themselves from abuse of process and malicious prosecution by plaintiffs.

The underlying contract sued on by plaintiffs against defendants provided that the prevailing party in a legal action shall recover their reasonable attorneys fees and costs in any litigation. That applies to this post-judgment action by plaintiff against Calvin Yeager, Matthew Matlock, Melissa Yeager or Pronto Pizza Inc.

Defendants request award of their attorneys fees, according to proof.

WHEREFORE, defendants pray the Court to dismiss this action, to dismiss any Order to Show Cause, and to award defendants their reasonable attorneys fees.

Dated: June 10, 2011

/s/ Robert P. Huckaby

Robert P. Huckaby,
Attorney for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the interested parties as follows:

Lance P. Maiss
Armstrong Teasdale LLP
50 West Liberty St. #950
Reno, NV 89501

by first class mail, postage prepaid, and
by email to lmaiss@armstrongteasdale.com

Dated: June 10, 2011

/s/ Robert P. Huckaby

Robert P. Huckaby